

B28  
Q1

a processor-memory unit, the processor-memory unit being coupled to the electronic meter reader, the processor-memory unit being arranged to process and to store information relating to the usage of the utility, wherein the information includes the meter counts obtained from the electronic meter reader; and

a connection mechanism, the connection mechanism being coupled to the processor-memory unit, wherein the connection mechanism is arranged to allow the processor-memory unit to transmit the processed information to a substantially remote receiving device;

wherein the connection mechanism is further arranged to send the message to the substantially remote receiving device.

18. (Once Amended) An apparatus as recited in claim 17 wherein the connection mechanism is one of a modem and an internet connection mechanism.

19. (Once Amended) An apparatus as recited in claim 17, further comprising an input device configured to permit one of a credit account number and a debit account number to be input into the apparatus.

#### REMARKS

The Examiner is thanked for the review of Applicant's application and the detailed response thereto.

#### Rejection Under 35 U.S.C. §102

In section 2 of the Office Action, the Examiner rejected claims 1 - 4, 6 - 8, 20, and 24 - 25 under 35 USC §102(e) as being anticipated by Crooks et al, U.S. Patent No. 6,052,671.

Importantly, the Examiner stated that the reference discloses "receiving a utility reading, the utility reading being a measure of the usage of the utility by a customer, wherein the utility reading is received from a first remote location across a first transmission medium" and referred to figure 7, elements 65 and 20, and column 2, lines 5 - 30. However, the identified sections make no mention of receiving a utility reading. Instead, the reference discusses receiving billing information from a billable entity. Billing information is very different than a utility reading that is a measure of the usage of the utility by a customer.

The identified sections of the '671 patent is directed towards a bill consolidation system. In order for the system described by the identified sections of the '671 reference to function, final bills must be presented to the consolidation system. The consolidation system then presents the billable entity with a single bill.

By contrast, it would be impossible for the invention described in independent claims 1 and 24 to first receive a final bill. Instead, claims 1 and 25 require that a utility reading first be received. The utility reading can be considered to be the raw data that is required in order to derive a bill. Once a utility reading is received, claims 1 and 25 require that an amount be determined by using the utility reading. There is simply no analogue to receiving a utility reading, and then determining an amount from that raw data in the identified sections of the '671 reference.

It is noted that dependant claims 2 - 9 and 25 - 26 depend either directly or indirectly from either independent claim 1 or 24 and, as such, are allowable for at least the same reasons as those stated above.

Although the Examiner also identified claim 20 as being anticipated by the '671 patent, the Examiner did not identify any relevant portion of the '671 patent. It is, however, gratuitously noted that claim 20, and the associated dependant claims 21 - 23 all require a processing mechanism that receives a measure of utility and the ability to effect either a credit transaction or a debit transaction. Clearly, billing details must be determined before a credit or debit transaction can be initiated. Therefore, nothing in the previously identified sections of the '671 reference would anticipate receiving a measure of utility and effecting a credit or debit transaction.

The Applicant believes that, for at least these reasons, claims 1 - 9 and 20 - 26 clearly distinguish themselves from the prior art.

#### Rejection Under 35 U.S.C. §102

In section 3 of the Office Action, the Examiner rejected claim 15 under 35 USC §102(e) as being anticipated by Chasek, U.S. Patent No. 5,894,422. Claim 15 has been cancelled without prejudice or disclaimer.

It is noted that the Examiner has not rejected claims 16 - 19 in the Office Action. Although claim 16 has also been cancelled without prejudice or disclaimer, claims 17 and 18 remain in substantially their original form. Claim 17 has been amended to be independent and claim 18 has been amended to depend from claim 17. Although the Applicant does not know whether the Examiner finds claims 17 or 18 objectionable, the Applicant gratuitously notes that the identified sections of patent '422 describes a "low power radio transmitter 111a" (Col. 4, line 37) which would be incapable of sending a message to a substantially remote receiving device, as required by claims 17 and 18. Claim 19 includes a limitation that is also found in claim 13, and the Applicant refers the Examiner to the section discussing claim 13 below.

The Applicant believes that, for at least these reasons, claims 17 - 19 clearly distinguish themselves from the prior art.

### Rejection Under 35 U.S.C. §103

In section 4 of the Office Action, the Examiner, under 35 U.S.C. § 103(a), rejected claim 5 as being obvious to Crooks et al in view of Chasek.

As has been already discussed, Crooks et al does not teach receiving raw utility data from any source, much less a smart meter. Additionally, the assertion that Crooks et al discloses receiving address information is irrelevant to claim 5's requirement of having address information associated with a location of a smart meter. As previously discussed, the system of Crooks et al requires final bills, and would have no need for an association between address information and a smart meter location.

The Applicant believes that, for at least these reasons, claim 5 clearly distinguishes itself from the prior art.

### Rejection Under 35 U.S.C. §103

In section 5 of the Office Action, the Examiner, under 35 U.S.C. § 103(a), rejected claims 9 and 26 as being obvious to Crooks et al in view of Thompson, U.S. Patent No. 4,948,174. Specifically, the Examiner stated, "it would be obvious to one of ordinary skill in the art, at the time the invention was made to utilize VisaNET as a design choice equivalent to any credit card or ACH or ATM system for the benefit of customer convenience." The Applicant respectfully disagrees.

The fundamental purpose of the system described in the '671 patent is to provide a consolidated bill to a consumer. However, if VisaNET were used, there would be no need to consolidate bills. A credit card billing statement automatically consolidates bills, providing a consumer with a single bill that lists all charges made in the previous month from a variety of merchants. Therefore, the Applicant believes that there would be no motivation to combine the consolidation system of the '671 patent with a system such as VisaNET.

The Applicant believes that, for at least these reasons, claims 9 and 26 clearly distinguishes themselves from the prior art.

### Rejection Under 35 U.S.C. §103

In section 6 of the Office Action, the Examiner, under 35 U.S.C. § 103(a), rejected claims 10 - 12 and 27 as being obvious to Chasek in view of Thompson. Specifically, the Examiner stated, "it would be obvious to one of ordinary skill in the art, at the time the invention was made to utilize as a design choice equivalent any credit card or ACH or ATM system to initiate a credit

and debit transaction for the benefit of customer convenience.” The Applicant respectfully disagrees.

The credit card has been available in some form since 1951. Nearly 50 years later, the ‘422 patent makes no mention of credit cards. Even with the huge popularity of credit cards, over 500 million credit card accounts, the Examiner has not identified a single reference that discusses a utility company obtaining a utility meter reading and then a utility message, and having that message initiate a credit or debit transaction. One can only assume that having a utility company utilize credit cards is not obvious.

Furthermore, the claims at issue do not simply require that utility companies accept credit cards as payment, but require that a utility message “initiate” either a credit or debit transaction. In other words the utility company must have previously received authorization to make charges on a credit or debit account, and then automatically initiates transactions when appropriate.

MPEP § 706.02(j) requires that “there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings.” Upon review of the identified sections of the ‘422 patent, there is simply no suggestion or motivation to set up reoccurring payment schemes whereby a utility message initiates either a credit or debit transaction. Payment schemes, much less ones using credit or debit transactions, are simply not contemplated in the ‘422 patent. Therefore, without a basis to combine the references, any obviousness rejection would be only an impermissible hindsight reconstruction of the claimed invention.

It is noted that dependant claims 11 and 12 depend either directly or indirectly from independent claim 10 and, as such, are allowable for at least the same reasons as those stated above.

The Applicant believes that, for at least these reasons, claims 10 - 12 and 27 clearly distinguish themselves from the prior art.

#### Rejection Under 35 U.S.C. §103

In section 7 of the Office Action (identified as section 6 on page 6), the Examiner, under 35 U.S.C. § 103(a), rejected claims 13 - 14 and 28 as being obvious to Chasek. Specifically, the Examiner stated that he considers the limitation of “configuring the utility meter includes entering one of a credit account number and a debit account number into the utility meter” to be “non-functional descriptive material which will not distinguish the invention from the prior art in terms of patentability.” The Applicant respectfully disagrees.

As a preliminary matter, it is noted that the identified sections of ‘422 do not allow for customer-specific information to be entered into the meter. In fact, the use of PROM described in the identified sections of ‘422 strongly suggests that the reference considers a customer

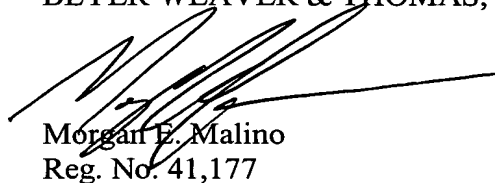
identification code as being very static, unlike a choice to pay by credit or debit, which can change with a customer's whimsy.

Regardless, MPEP § 2106 states that functional descriptive material "consists of data structures and computer programs which impart functionality when employed as a computer component" as opposed to "music, literary works and a compilation or mere arrangement of data." Clearly an account number is not analogous to music, literary works or mere arrangement of data, which would all be more properly protected under copyright law. An account number is absolutely essential in the processing of a credit or debit transaction. It is a functional component that must be present if payment by credit or debit is desired. In the preferred embodiments of claims 13, 14 and 28, the credit account information is used to directly drive the described credit transaction. In those preferred embodiments the account number is, unlike music, literary works, or mere arrangements of data, an essential component.

The Applicant believes that, for at least these reasons, claims 13 - 14 and 28 clearly distinguish themselves from the prior art.

Applicant believes that all pending claims are allowable and respectfully requests a Notice of Allowance for this application from the Examiner. Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at the telephone number set out below.

Respectfully submitted,  
BEYER WEAVER & THOMAS, LLP



Morgan E. Malino  
Reg. No. 41,177

P.O. Box 778  
Berkeley, CA 94704-0778  
(650) 961-8300

MARKED UP VERSION OF AMENDED CLAIMS

In the Claims:

17. (Once Amended) An apparatus [as recited in claim 16] for monitoring the usage of a utility, the apparatus comprising:

an electronic meter reader, wherein the electronic meter reader is arranged to electronically obtain meter counts associated the usage of the utility

a processor-memory unit, the processor-memory unit being coupled to the electronic meter reader, the processor-memory unit being arranged to process and to store information relating to the usage of the utility, wherein the information includes the meter counts obtained from the electronic meter reader; and

a connection mechanism, the connection mechanism being coupled to the processor-memory unit, wherein the connection mechanism is arranged to allow the processor-memory unit to transmit the processed information to a substantially remote receiving device;

wherein the connection mechanism is further arranged to send the message to the substantially remote receiving device.

18. (Once Amended) An apparatus as recited in claim [15] 17 wherein the connection mechanism is one of a modem and an internet connection mechanism.

19. (Once Amended) An apparatus as recited in claim 17, further comprising an input device configured to permit one of a credit account number and a debit account number to be input into the apparatus [15 further including:

a configuration interface, the configuration interface being arranged to enable customer information to be entered into and stored into the processor-memory unit; and

a power supply mechanism, the power supply mechanism being arranged to power the apparatus].